U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

NOV 10 2010

Mr. Alfred M. Adams
Premier Jet, LLC
6501 Greenway Parkway, #103-501
Scottsdale, AZ 85254

Dear Mr. Adams:

This letter is in response to your June 30, 2010 request for interpretation regarding whether your client could conduct operations arranged by a third-party broker under 14 C.F.R. part 135.

In your letter you describe the proposed business arrangement as follows. Your client would hold a part 119 operating certificate permitting part 135 on-demand operations. Another entity, the "broker," who runs a membership-based travel club, would advertise to potential and existing travel-club members that it can arrange air transportation for them. If a travel club member expresses interest in air transportation, the broker would contact your client to provide the flight. Your client would provide the aircraft and flight crew for all flights under this arrangement. Flights would be conducted in the Southwestern United States.

You noted that your client would operate two types of airplanes, one with a seating capacity of 14 passengers and one with a seating capacity of 18 passengers. We assume for purposes of this response that your aircraft meet the passenger seating and payload capacity requirements that would permit the airplanes to be operated in common carriage under part 135.[1]

We will discuss the two specific scenarios presented in your letter and expanded upon during your conversation with a member of my staff. In the first scenario a travel club member approaches the broker for air transportation. In the second scenario, the broker approaches the travel club members in an attempt to fill already booked aircraft.

We caution you that this analysis only addresses whether your proposed operations would be permissible under the FAA regulations governing safe flight of civil aircraft in air commerce. The Department of Transportation (DOT) maintains a separate requirement for entities to obtain economic authority before serving as an air carrier. Based upon the information you provided to us, it appears that the broker would be an indirect air carrier, which, under our understanding of DOT regulations as applied here, may be unlawful.

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[1] On-demand operations include "[c]ommon carriage operations conducted with airplanes, including turbo-jet powered airplanes, having a passenger-seat configuration of 30 seats or fewer . . . and a payload capacity of 7,500 pounds or less . . . ." § 119.3 (definition of "on-demand operations").

Therefore, we advise you to contact the Office of Aviation Enforcement and Proceedings in DOT's Office of the Secretary of Transportation at (202) 366-9342 to determine if this is the case.

In the first scenario a travel club member informs the broker that he or she would like to arrange for air travel and proposes the departure location, departure time, and arrival location to the broker. The broker then would approach your client, the part 135 operator, on behalf of the travel club member. Your client would then decide whether to provide the flight. We assume, for this scenario, that the flight is accepted.

This operation would meet the definition of an on-demand operation because it is a passenger-carrying operation in which the "departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative," in an airplane with a passenger-seat configuration of 30 seats or fewer, and a payload capacity of 7,500 pounds or less. *See* § 119.3 (definition of "on-demand operation"). On-demand operations are conducted under the part 135 rules. *See* § 119.21(a)(5). Accordingly, your client could conduct this operation under a part 119 operating certificate permitting part 135 on-demand operations. In response to your question regarding whether there would be a limit on the number of flights your client could conduct on a specific route, we note that the FAA permits part 135 on-demand operators to conduct limited scheduled operations. *See* § 119.3 (definition of "on-demand operation").

In the second scenario, your client's aircraft has been booked by a travel club member through the broker as discussed in the first scenario. However, the travel club member did not purchase the entire capacity of the airplane and several open seats remain. The broker then advertises to its members that seats are available on a flight and provides the departure location, departure time, and arrival location.

Such an operation meets the definition of a scheduled operation. The broker, on behalf of your client, would be "offer[ing] in advance the departure location, departure time, and arrival location." *See* § 119.3 (definition of "scheduled operation"). A scheduled operation conducted in turbojet-powered airplanes, airplanes with a passenger-seat configuration of more than nine passengers, or airplanes with a payload capacity of more than 7,500 pounds, between or within the 48 contiguous United States would be a "domestic operation" which must be conducted under part 121. *See* § 119.3 (definition of "domestic operation"); § 119.21(a)(1) (requiring domestic operations to be conducted under part 121). Accordingly, to conduct scheduled operations, your client would need to obtain an operating certificate permitting part 121 operations because the passenger-seat configuration of its aircraft exceed the nine passenger limit.

This response was prepared by Dean E. Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Air Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of additional assistance.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200